

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
STATE OF TENNESSEE, DEPARTMENT OF)	FCC File No. 0007941663
SAFETY AND HOMELAND SECURITY)	
)	
Request for Waiver of Section 1.949 of the)	
Commission's Rules)	

ORDER

Adopted: December 7, 2017**Released: December 7, 2017**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Order*, we grant the Tennessee Department of Safety and Homeland Security's (Tennessee) waiver request to accept its late-filed renewal application for its 700 MHz state license authorized under call sign WPTZ797.¹

II. BACKGROUND

2. The state channels consist of ninety-six channel pairs (12.5 kHz bandwidth) from the public safety narrowband segment (769-775 MHz-799-805 MHz) of the 700 MHz band that are reserved for use by each state, territory, district or possession (state licensees) on a geographic-area basis.² In 2002, the Commission issued Tennessee a 700 MHz state license under call sign WPTZ797 for an initial 15 year period.³ After the initial fifteen year license term, the Commission renews state licenses, for ten years.⁴ Renewal is not automatic, however state licensees have a renewal expectancy provided they comply with certain licensing and operational conditions, including satisfying a substantial service requirement.⁵

3. To ensure efficient use of the state channels, the Commission established a five-year interim and a ten-year final benchmark for state licensees to provide specified levels of substantial

¹ See FCC File No. 0007941663 (dated Sept. 28, 2017) and Letter from Arnold Hooper, Director of Wireless Services, Tennessee Department of Safety & Homeland Security to FCC (dated Sept. 28, 2017) (Waiver Request).

² 47 CFR §§ 90.529 and 90.531(b)(5).

³ See *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010*, Third Memorandum Opinion and Order and Third Report and Order, 15 FCC Rcd 19844, 19871 para. 61 (2000) (establishing a 15 year initial license term for 700 MHz state licenses).

⁴ *Id.*

⁵ *Id.*

service.⁶ In 2011, the Commission clarified that the start date for measuring the 5-year and 10-year substantial service deadlines was June 12, 2009. Thus, the 5-year deadline expired on June 13, 2014, and the 10-year deadline will expire on June 13, 2019.⁷

4. On July 28, 2014, the Public Safety and Homeland Security Bureau (Bureau) granted Tennessee's initial substantial service showing that demonstrated that Tennessee, met the substantial service requirement prior to June 13, 2014.⁸ On February 20, 2017, the Bureau reminded Tennessee to renew its license on or before May 14, 2017 – the expiration of the initial 15 year license term.⁹ Tennessee, however, failed to submit a license renewal application and its license expired on May 14, 2017, by operation of rule.¹⁰

5. On September 28, 2017, Tennessee requested a waiver of Section 1.949 of the Commission's rules¹¹ to permit the acceptance of a late-filed renewal application.¹² It explained that it currently uses state license channels at over 50 sites and that its trunked radio system has over 30,000 users.¹³ Tennessee claims that losing the state license and having to apply for, and receive, a new license and call sign—would require changing call sign identifiers at every location.¹⁴ Tennessee attributes the failure to timely renew its license to staff turnover.¹⁵ It commits to check the FCC licensing database every 45 days to ensure its licenses remain current and to take additional measures to timely respond to FCC correspondence.¹⁶

III. DISCUSSION

6. In 1999, the Commission adopted a policy for treating late-filed renewal applications in the wireless services.¹⁷ Renewal applications filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation between the expiration of the license and the untimely renewal filing.¹⁸ Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *nunc pro tunc*, but such

⁶ “Substantial service” is defined as the construction and operation of facilities on state channels which is “sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.” See 47 CFR § 90.529(c).

⁷ See *Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands*, Declaratory Ruling, 26 FCC Rcd 10895 (2011).

⁸ See FCC File No. 0006319870 (filed Jun. 11, 2014).

⁹ See Renewal Reminder Notice, FCC Reference No. 6232648 (dated Feb. 20, 2017).

¹⁰ 47 CFR § 1.955(a)(1) (“Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed.”).

¹¹ 47 CFR § 1.949.

¹² See Waiver Request at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476 (1999) (ULS MO&O).

¹⁸ See *id.* at 11485 para. 22.

requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁹ In determining whether to grant a late-filed renewal application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.²⁰

7. Based on the facts and circumstances here, we conclude that Tennessee's request should be granted and that dismissal of its application would be unduly burdensome and contrary to the public interest. We believe that two of the factors set forth by the Commission's policy for the treatment of late-filed renewal applications—i.e., the potential consequences to the public if the license should terminate, and the performance record of the licensee—support Tennessee's request. First, we are concerned that a dismissal of Tennessee's application would potentially disrupt public safety communications. Because Tennessee does not have a master system station identification capability, changes to its station identification must be made on a per site basis. Given that Tennessee has over 50 sites across the state, we believe that termination of Tennessee's license would not be in the public interest. Second, we recognize that Tennessee satisfied the Commission's initial substantial service requirement and that it has implemented steps to better manage its licenses and timely respond to FCC correspondence. For these reasons, we grant Tennessee's late-filed renewal application for call sign WPTZ797.²¹

8. Notwithstanding our decision here, we caution that a licensee will not be afforded special consideration when it fails to file a timely renewal application merely because it engages in public safety activities.²² The Commission also has stated that turnover in recordkeeping personnel, failure to check computer records, or simple forgetfulness are not valid excuses for failure to file a timely renewal application.²³

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 CFR § 1.925, that the waiver request submitted by the State of Tennessee Department of Safety and Homeland Security on September 28, 2017, IS GRANTED. We instruct staff to process the renewal application, FCC File number 0007941663, in accordance with this *Order*.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁹ *Id.*

²⁰ *Id.*

²¹ See, e.g., *Commonwealth of Puerto Rico*, Order, 32 FCC Rcd 7009 (PSHSB 2017) (waiving Section 1.949 of the rules, 47 CFR § 1.949, to accept the Commonwealth of Puerto Rico's late-filed renewal application for its 700 MHz state license).

²² See *Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations*, Report and Order, 6 FCC Rcd 7297, 7301 para. 20 (1991).

²³ See *ULS MO&O*, 14 FCC Rcd at 11485 and n.21.